

ACT calls for review of insolvency regime

London

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The ACT has called upon the Government to commission a major enquiry into the corporate insolvency regime. All too often lenders, suppliers and customers treat the appointment of administrators as a step towards sale of the assets, rather than towards corporate reconstruction and the formation of a viable ongoing business, as was the intention of the Enterprise Act. An immediate review is important given that in recent years the relationships between participants in the lending markets have changed – there now being a wider diversity of lending institutions, more secondary trading of loans and far higher levels of derivative activity.

Richard Raeburn, Chief Executive said: “A major review of corporate insolvency should look at behaviours as well as law. It should involve a wide cross section of stakeholders and take note of the trends in the US and Europe and in particular the recent changes in France. We realise that a review of the insolvency regime would be a long term project, but is a necessary one.”

The full text of the ACT’s letter to HM Treasury is available at:

<http://www.treasurers.org/technical/resources/actukinsolvency0907.pdf>

Summary for editors:

For companies in financial distress the old “London Approach”, promoted by the Bank of England, would encourage banks to provide rescue finance and so allow the company to work its way out of trouble. For the banks the aim was to work with the company and so preserve the value of their loans. This solution is less easy to pursue nowadays. The primary lending markets include a wider diversity of lending institutions and in the secondary market specialist distressed debt funds and others are looking for trading profit, extracting a high price for agreeing to rescue terms or swapping debt for equity. This and the concept of trading credit risk via derivatives, mean that lenders can be reluctant to be subject to the “London Approach”. Some newer institutions lack internal Chinese Walls between staff trading in different markets and to avoid becoming insiders do not wish to receive non-public information and therefore preclude themselves from any syndicate decision making.

A well adapted corporate insolvency regime is important to keep down the cost of capital to companies and to encourage investment and entrepreneurship. The many stakeholders involved including employees, customers and the communities in which a company operates as well as the direct financial creditors, all have an interest in corporate survival. Furthermore the greatest public interest at times of corporate financial distress is to ensure the survival of as much of the real option value implicit in the company as possible. Real option value derives from a business’s choice or right to take some decision, for example the opportunity to exploit some ideas or skills or to invest in a new factory. For young companies or smaller high tech companies insolvency can mean that real options are destroyed and will never be exploited, although at later stages or with more established technology the ideas and potential are more likely to be taken up by others elsewhere. It is society as a whole which suffers from destruction of these options.

The ACT proposes that the time is right for government to commission a major enquiry into corporate insolvency. The report of the enquiry would give the government a solid foundation on which to base its legislative proposals. It could also be a key part of changing attitudes to administration or other restructuring processes, although changing behaviour is harder than changing the law

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For further information, please contact:

Richard Raeburn (Chief Executive, ACT) on 020 7847 2542 (direct line) or 020 7847 2540 (switchboard) Email rraeburn@treasurers.org

John Grout (Technical Director, ACT) on 020 7847 2575 (direct line) or 020 7847 2540 (switchboard) Email jgrout@treasurers.org

Martin O'Donovan (Assistant Director, Policy and Technical, ACT) on 020 7847 2577 (direct line) or 020 7847 2540 (switchboard) Email modonovan@treasurers.org

Peter Matza (Policy and Technical Officer, ACT) on 020 7847 2576 (direct line) or 020 7847 2540 (switchboard) Email pmatza@treasurers.org

Anthea Michaelides (Marketing Assistant, ACT) on 020 7847 2546 (direct line) or 020 7847 2540 (switchboard) Email amichaelides@treasurers.org

NOTES TO EDITORS

Should editors wish to commission an article from the ACT, please contact Anthea Michaelides (as above).

About the ACT

The Association of Corporate Treasurers (ACT) is the international body for finance professionals working in treasury, risk and corporate finance. Through the ACT we come together as practitioners, technical experts and educators in a range of disciplines that underpin the financial security and prosperity of an organisation.

The ACT defines and promotes best practice in treasury and makes representations to government, regulators and standard setters.

We are also the world's leading examining body for treasury, providing benchmark qualifications and continuing development through training, conferences and publications – including The Treasurer magazine.

For further information visit www.treasurers.org